

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877

**MINUTES OF A MEETING OF THE BOARD OF APPEALS
THURSDAY FEBRUARY 8, 2007**

Chairperson Harvey Kaye called the meeting to order at 7:30 p.m. Members present: Richard Knoebel, Vice Chairperson and Board Members Carol Rieg, and David Friend, alternate. Absent: Victor Macdonald and Gary Trojak. Staff present: Caroline Seiden, Planner, William Chen, Attorney to the Board of Appeals, and Ashley Geisbert, Recording Secretary.

I. APPROVAL OF MINUTES

Chairperson Harvey Kaye requested that the Board defer approval of the January 11, 2007, Board of Appeals meeting until the March 8, 2008 Board of Appeals meeting.

II. SPECIAL EXCEPTION REVIEW – BIENNIAL REVIEW

A-351 Ines Reed

The petition requests a review of a special exception granted on May 5, 1988 to allow a rooming house (for 5 rooms) in the R-90 (Medium Density Residential) zone as permitted by Section 24-29(3) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) at 109 South Summit Avenue, Gaithersburg, Maryland.

Planner Caroline Seiden introduced A-351 to the record. She stated that a memorandum from Neighborhood Services Director Kevin Roman confirms that the conditions of approval adopted by the Board of Appeals on January 13, 2005 are still accurate. There have been no complaints regarding the property and a rental housing license was in fact issued and will remain current through May 31, 2008.

Board Member Rieg inquired if there had been any sort of on-site review of the property at 109 South Summit Avenue. Ms. Seiden referred Ms. Rieg back to the memo from Kevin Roman, Neighborhood Services Director.

Motion was made by Board Member Knoebel, seconded by Board Member Rieg, that the Board of Appeals approve the petition requesting a special exception biennial review, A-351 with the following 10 conditions:

- 1) Not more than five (5) roomers shall be permitted to occupy the structure at any one time;
- 2) This Special exception is granted for two (2) years; the applicant shall be required to renew this application within a two (2) year period and very two years thereafter, or sooner upon the request of the department of Planning and Code Administration. (Next review should be January 2009).

- 3) The entire premises of 109 South Summit Avenue are to be licensed every two (2) years in accordance with Chapter 18AA (Rental Housing) of City Code and inspected by City staff for compliance of Chapter 11 (Fire Safety), Chapter 17AA (Property Maintenance) of the City Code;
- 4) Each tenant shall be required to sign a lease form prior to tenancy (the contents of this lease must be approved by the City Rental Housing staff prior to occupancy of 109 South Summit Avenue as a rooming house). The owners of the premises must submit within thirty (30) days of the execution of the lease a copy of each tenant's lease and copies of any future leases to City Rental Housing staff;
- 5) Each bedroom must be labeled with the tenant's name;
- 6) Use of the basement for sleeping purposes is prohibited because it does not comply with the building or life safety code egress requirements;
- 7) The kitchen in the basement shall not be used by the roomers (tenants) and the existing kitchen shall be inspected to insure compliance by City and WSSC Codes;
- 8) The parking lot shall be paved with ten (10) spaces designated individually for the roomers, the owners of the house, and the home occupation patrons;
- 9) This special exception is granted to Ines Reed only; with any sale or exchange of the property at 109 South Summit Avenue to others this special exception shall become null and void; and
- 10) Occupancy certificates shall be subject to all conditions set forth in this opinion.

III. RESOLUTION

A-526 **RST Development LLC**

The application requests an Administrative Review of a determination by City Staff requiring a site plan amendment approval from the Planning Commission prior to reoccupation of existing dwellings at West Deer Park Apartments, 70 West Deer Park Road, Parcel A, Gaithersburg, Maryland.

Motion was made by Board Member Rieg, seconded by Board Member Knoebel, that the Board of Appeals conduct a closed executive session as of 7:40 p.m., February 8, 2007, and the meeting be held pursuant to section 10-508(a)(7) of the State Government Article of the Annotated Code of Maryland, for the purpose of consultation with legal counsel.

VOTE: 4-0

**THE BOARD OF APPEALS TOOK A RECESS AT 7:40 P.M.
TO CONDUCT A CLOSED EXECUTIVE SESSION.
IT RECONVENED AT 8:15 P.M.**

Upon reconvening, Chairperson Kaye read the following statement into the record:

A closed executive meeting was held by the Board of Appeals at 7:40 p.m. in the Gallery of City Hall for the purpose of consulting with legal counsel William Chen. The closed session was held pursuant to Section 10-509(a)(7) of the State Government Article of the Annotated Code of Maryland. No vote was taken during the session. All board members were present. Other than receiving the advice of Mr. Chen, no action was taken by the Board in the closed executive session, and it adjourned at 8:15 p.m. The minutes of that closed session are maintained separately under seal.

Planner Caroline Seiden re-introduced the application for the record.

Board Members reviewed the draft opinion and resolution and minor adjustments were made.

Motion was made by Alternate Board Member Friend, seconded by Chairperson Kaye that the motion filed by the City of Gaithersburg to dismiss administrative review Case A-526 be, and it is DENIED, and that the Administrative Review Case A-526 be, and it is, DISMISSED, for lack of jurisdiction, and that the Resolution and Opinion of Denial be accepted, as amended.

VOTE: 4-0

IV. AMENDMENT TO SPECIAL EXCEPTION

A-522(A) Jacqueline Karp for Verizon Wireless

The application requests a one-year extension for completion of installation of Special Exception A-522, to erect a telecommunications facility to include twelve (12) antennae and related equipment on the roof and a generator on the ground of 9751 Washingtonian Boulevard, Parcel A, Washingtonian Center, Gaithersburg, Maryland. The property is located in the MXD (Mixed Use Development) Zone as allowed by Section 24-160D.3 (d) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

Chairperson Kaye moved the review of A-522(A) to agenda item IV. from item V. in order to ensure that the Board completed its review prior to the expiration of the Special Exception.

Planner Caroline Seiden introduced this amendment to special exception to the record. She stated that there are 3 exhibits in the record file. Ms. Seiden also notified the Board that Jacqueline Karp, applicant, would not be present for the meeting.

Minor revisions were made to the draft resolution.

Motion was made by Board Member Knoebel, seconded by Chairperson Kaye to approve A-522(A) with six (6) conditions:

- 1) At such time as Verizon Wireless ceases to use the facility, the antennas, cabinets and associated equipment shall be removed by the petitioner at the petitioner's expense;

- 2) The antennas and equipment shelter mounted to the rooftop shall be colored to match the existing wall;
- 3) Approval of this special exception does not include the ground generator and related fencing and landscaping, as indicated on the site plan. Applicant is to submit a revised site plan prior to the submission of a commercial permit;
- 4) Prior to the issuance of a building permit, applicant is to provide an executed lease from the property owner that requires at such time as Verizon Wireless ceases to operate, that the antennas, cabinets and associated equipment must be removed;
- 5) Installation of antennas and associated equipment must be completed by February 8, 2008;
- 6) Applicant is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in A-522 Exhibits #9 and #10.

VOTE: 4-0

THE BOARD OF APPEALS TOOK A SHORT RECESS AT 8:40 P.M.
IT RECONVENED AT 8:45 P.M.

V. SPECIAL EXCEPTION

A-527 James Michael for Nextel Communications of the Mid-Atlantic, Inc. by General Dynamics Network Systems, Inc. & T-Mobile Northeast, LLC.

The application requests a Special Exception for a 100 foot high telecommunications monopole, antennas and related ground equipment at 707 Conservation Lane, Parcel N105 Gaithersburg, Maryland. The property is located in the R-A (Low Density Residential) zone as allowed by Section 24-25(11) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code).

Planner Caroline Seiden introduced the application for special exception A-527 to the record. Ms. Seiden stated that the public hearing was advertised in the Gaithersburg Gazette on January 24, 2007, and that there are 57 exhibits in the record file. There was a recommendation of approval received from the Planning Commission as well as amended conditions by staff that were also added to this exhibit list.

Chairperson Harvey Kaye made note to the public and the board, that he is a member of the Izaak Walton League of America (IWLA). The IWLA is the owner of the proposed special exception property. He did not believe it would affect his judgment either way, but requested that any persons with objections speak their concerns. There were no objections.

Chairperson Harvey Kaye swore in Mr. James Michael, applicant, who would be testifying in support of the application for Nextel Communications of the Mid-Atlantic, Inc. and T-Mobile Northeast.

Mr. James Michael, Esq., applicant, described the details of the proposed project, noting that while Sprint and Nextel are now one company, the two carriers have separate, different networks. The two paths of the company

are continuing to build out their networks, both trying to provide continuing reliable service. This particular application is for the IDEN, Nextel component of the Sprint/Nextel combine. Mr. Michael referenced the City's requirement for co-location. Nextel intends to build this site to accommodate 3 total carriers; Nextel, T-Mobile and one other carrier, to satisfy the city code requirement of 3 carriers.

Mr. Michael testified that due to a national rebanding order, Nextel is decommissioning a current site located at the Washingtonian Center. Nextel will in turn need to build four or five shorter more integrated sites in or around the immediate area. The emphasis now by the industry is on in-building coverage, and these lower sites should get this type of coverage that is being sought. One or two of these planned sites may be in the City, others may be in Montgomery County.

An aerial photo was displayed to show the exact location of the proposed 100 ft. high monopole on the Isaak Walton League property. The location is heavily wooded, and would be visible only to the nearby federal property. Residents of Quince Orchard Park as well as the Timberbrook neighborhood, located in the vicinity of the proposed site, were notified of the anticipated monopole. Mr. Michael stated that he had offered himself for questioning at any future HOA or board meetings that either neighborhood may hold regarding the project, but to this date, neither community requested his presence. Chairperson Kaye asked for clarification on the map as to the locations of the site and residential areas of which he was speaking. Mr. Michael showed him each location on the map as well as the tree buffer between the residential areas and the proposed site location.

Mr. Michael noted Nextel's policy of using existing structures, if available. He reviewed several buildings in the area whose owners declined Nextel's offers. Mr. Michael also expressed his full intention to create any form of camouflaging that the Board of Appeals may request of him.

Exhibits #37 and #38 show the comparison in coverage area without the new MD3807-Suffield site versus with the new site. Mr. Michael noted that he is aware that the Board expects coverage maps *after* installation, and that he is fully prepared to supply them. Chairperson Kaye made it clear to him that they must be in the same format provided as the *pre-installation* coverage map.

Mr. Michael further testified that there is currently a greater emphasis on network reliability due to a larger usage of not only voice services, but data services as well. Residents and workers in the vicinity of this new cell site will benefit from a more dependable service, and a larger coverage area. Through contact with the Maryland State Police, it has been determined that there are approximately 450 Nextel phones in use by the State Police Department. Public safety may ultimately benefit from the service upgrade.

Mr. Michael read the standards and requirements to special exceptions for Telecommunications as stated in Section 24-167A(D)(2), and described how this projected monopole adequately meets all of the standards. Mr. Michael then opened the floor for questioning.

Chairperson Harvey Kaye inquired about site visibility. Mr. Michael replied that it is approximately 1500 ft. from Muddy Branch Rd. and is expected to be 98% invisible. The shelter however will not be able to be seen. The Isaak Walton League property owners are not requesting or requiring a board on board fence surrounding the shelter.

Board Member Rieg questioned the applicant about the tree buffer and whether there was a predominant tree type. Mr. Michael informed the Board that there is a variety of trees with regard to height and type. There is planned to be a minimal disturbance to the trees in the projected area, only enough to put the compound on site,

located off of Conservation Lane. There will be substantial screening by the trees to the residential areas. The site offers the best screening that they could find in the area, visually.

Planner Caroline Seiden commented that draft conditions #7 and #8 of the amended conditions addressed reforestation requirements.

Upon being sworn in, Mr. Charles Wiles, manager of building and grounds at the Isaac Walton property, spoke in response to Board Member Rieg's question on the trees in the tree buffer. He said that there is a mix of hardwoods on the property, most are rather tall particularly those facing the surrounding neighborhoods. There are a number of locust trees near the compound. These trees are known to be diseased, die, and then return. He explained that the locust trees are bothersome and that having these being the trees around the compound, there will not be a great loss. He also said that there are a number of good oak trees and wild cherry trees in the surrounding area.

Board Member Knoebel and Alternate Board Member Friend both commented that they were in favor of the camouflaged tree technique. The Board discussed the inclusion of a condition regarding the camouflage monopole and agreed that Staff would make a final determination on the extent of camouflaging needed.

Board Member Knoebel expressed his concerns about receiving coverage information *after* installation. The Board had still not received this information from previous special exception applications.

Chairperson Harvey Kaye swore in Mr. Mike Budde representing T-Mobile. Mr. Budde informed the Board that they are actively working on submitting coverage information for the previously approved location and that they should be submitted within a week or two. Ms. Seiden confirmed that she was in fact in contact with Mr. Budde in regards to the needed coverage area submittals.

Chairperson Harvey Kaye asked if anyone in the audience who would like to speak.

Chairperson Harvey Kaye swore in Mr. David Bear, Fleece Flower Dr.

Mr. David Bear, Fleece Flower Dr., saw the public hearing notice in the Gazette. He suggested that the need for another cell tower be fully considered. Comments and concerns should be received from parents and residences before following through with these cell sites. He had health concerns for local residents and school attendees. Chairperson Harvey Kaye made it clear that "health concerns" would not be able to be taken into consideration by the Board due to limitations on the Board's reviewing powers by the FCC.

Motion was made by Board Member Knoebel, seconded by Board Member Rieg, to close the record on A-527.

VOTE: 4-0

Board Members made minor corrections and modifications to the draft resolution.

Motion was made by Board Member Knoebel, seconded by Board Member Rieg, to approve the resolution of A-527 with corrections as noted and the following eleven (11) conditions:

- 1) Prior to the issuance of a building or site work permit, petitioners are to provide a lease from the property owner that requires at such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or their successors cease to operate, that the antennas, cabinets and associated equipment must be removed;
- 2) At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
- 3) At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
- 4) Nextel communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits #37 and #38;
- 5) T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits #39 and #40;
- 6) Prior to the application of a building permit, applicant to revise fence detail remove barbed wire and indicate fence material as black vinyl chain link fence up to 8 feet in height;
- 7) Prior to the application of a building permit, applicant is to revise site plan to include grading and reforestation requirements in accordance with Section 22-9 of the City Code;
- 8) Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
- 9) Installation of antennas and associated equipment must be completed by February 8, 2008;
- 10) If the installation is not complete by February 8, 2008, the petitioner must request a time extension, in writing, prior to February 8, 2008 and each subsequent year thereafter until such time as the installation is complete;
- 11) Prior to the issuance of a building permit, applicant is to submit a final plan to staff, indicating how the monopole will be camouflaged to blend with the trees.

VI. ADJOURNMENT

There being no more business to come before this meeting of the Board of Appeals, the meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Ashley B. Geisbert

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